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Dream Home Contests Ltd. v. R.

1959 CarswellAlta 66 • Alberta Supreme Court, Appellate Division • Alberta • December 10, 1959 (Approx. 12 pages)

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1959 CarswellAlta 66

Alberta Supreme Court, Appellate Division

Dream Home Contests Ltd. v. R.

1959 CarswellAlta 66, 126 C.C.C. 30, 30 W.W.R. 130, 32 C.R. 30

Regina v. Hodges

Regina v. Dream Home Contests (Edmonton) Limited

Ford, C.J.A., Macdonald, McBride, Porter and Johnson, J.J.A.

Judgment: December 10, 1959

Counsel: J. W. Anderson, for the Crown, respondent  
Neil D. Maclean, Q.C., for accused, appellants.

Subject: Criminal

Related Abridgment Classifications

Criminal law

VI Offences

VI.96 Lotteries

VI.96.d Conducting lottery

VI.96.d.i Elements

Headnote

Criminal Law --- Disorderly houses, gaming and betting — Lotteries — Conducting lottery — Nature and elements of offence

Criminal Law (Offences) — Lotteries — Sale of Tickets to Estimate Value of Prize House and Contents — Operators of Scheme Putting Up

Money to Ensure Prize Awarded Even if Only One Ticket Sold — Scheme within Cr. Code S. 179 (1) (e).

Appellants were convicted of conducting a scheme contrary to the *Criminal Code*, 1953-54, ch. 51, sec. 179 (1) (e). Tickets were sold for \$1 which entitled the purchaser to estimate the value of a house and contents, the person having the closest estimate to be given the house and a lot to which it would be moved. Appellants retained a trust company to assist in the conduct of the scheme, and the trust company required appellants to deposit with it a sum sufficient to guarantee that even if only one ticket were sold, the house would nevertheless be awarded to that ticket holder.

*Held*, dismissing the appeal, Johnson, J.A. dissenting, it does not matter that the valuable security to be awarded may not come directly from the proceeds of the sale of tickets. Under said scheme, appellants sought to recoup their outlay and make a substantial profit by the sale of tickets. The winner would be entitled to receive from appellants "a larger amount of valuable security than the sum paid" by him "by reason of the fact that other persons have paid any sum of money under the scheme," namely, by the purchase of tickets. Appellants had in mind the issuance to the winner of a clear title, both to the real and personal property to be awarded, which title was clearly "valuable security," as defined by *Code* sec. 2 (42). *Rex v. Roe*, [1949] S.C.R. 652, at 657, 8 C.R. 135, 94 C.C.C. 273, which reversed in part [1948] 2 W.W.R. 1000, 7 C.R. 26, 92 C.C.C. 189, 3 Abr Con (2nd) 204; *Rex v. Blain* (1951) 1 W.W.R. (NS) 145, at 150, 151, 11 C.R. 195, 99 C.C.C. 152, 3 Abr Con (2nd) 203, quoted and applied.

**Per Johnson, J.A., dissenting:**

While it was undoubtedly appellant's expectations that large numbers of tickets would be sold, the winning of the prize was not dependent on this or, in fact, on the sale of any tickets except one. There were therefore no "other persons" and an essential ingredient of the offence was missing. *Rex v. Roe*, *supra*; *Rex v. Blain*, *supra*, distinguished.

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**Words and phrases considered:**

**VALUABLE SECURITY**

... a transfer of lands and a certificate of title are each documents of title to land and as such are valuable security under the meaning of sec. 179 (1)(e) [of the *Criminal Code*, S.C. 1953-54, c. 51] ...

**Ford, C.J.A. concurs with Macdonald, J.A.:**

**Macdonald, J.A.:**

- 1 The appellants were respectively convicted by Barclay, P.M. at Edmonton, Alberta, on August 28, 1959, on the following charges:

that Ronald A. **Hodges**, between the 1st day of April, A.D. 1959, and the 27th day of June, A.D. 1959, at the City of Edmonton, Province of Alberta, did unlawfully conduct a scheme by which any person upon payment of a sum of money shall become entitled under the scheme to receive from the person conducting the scheme, or any other person, a larger amount of valuable security than the amount paid by reason of the fact that other persons have paid a sum of money under the scheme. Contrary to the provisions of Section 179 (1) (e) of the *Criminal Code*.

that **Dream Home** Contests (Edmonton) Limited, being a body corporate, between the 1st day of April, A.D. 1959, and the 27th day of June, A.D. 1959, at the City of Edmonton, Province of Alberta, did unlawfully conduct a scheme by which a person upon payment of a sum of money shall become entitled under the scheme to receive from the said Company a larger amount of valuable security than the amount paid by reason of the fact that other persons have paid a sum of money under the scheme. Contrary to the provisions of Section 179 (1) (e) of the *Criminal Code*.

- 2 The appellant **Hodges** was fined \$200 and in default of payment to two months' imprisonment in the provincial gaol — the appellant company was fined \$300, and in default of payment, distress.
- 3 Other charges against the appellants laid under sec. 179 (1) (a) were dismissed by the learned magistrate, on the grounds that skill entered into the estimates of the contestants.
- 4 The appellant company was duly incorporated under the laws of Alberta on March 16, 1959. One of the express objects for which the company was established is:  
  
to carry on in any part of the world business of promoting **Dream Home**, Merchandising and/or other contests.
- 5 The appellant **Hodges** is a majority shareholder in the said company and is signatory to its memorandum of association.

- 6 The evidence indicates that the appellants operated a scheme, known as the "**Dream Home** Contest," during the dates mentioned in the charges. The evidence further indicates that the promotion of the scheme was carried out entirely in the name of the appellant company and that the appellant **Hodges**, with practically no exception, was the main officer, promoter, business agent and the person responsible for the promotion of the said scheme.
- 7 The evidence establishes that a three-bedroom house with attached garage, fully completed and furnished, had been built and was on display to the public on property at Crosstown Motors Ltd. at 117th St. and Jasper Ave., Edmonton. During the period covered by the charges there was extensive and appropriate advertising on the said site.
- 8 At relevant times agreements were entered into between the appellant company and 27 community leagues and 14 branches of the Canadian Legion for the promotion and sale of tickets. Four hundred thousand tickets were printed, for sale at \$1 each. On one side of the ticket is the official entry blank entitling the person whose name appears below to estimate the total retail value in dollars and cents of the **dream home** with attached garage, and including all furnishings, fixtures, appliances and appointments therein contained, as displayed on Jasper Ave. between 117th St. and 118th St., Edmonton. Tickets could be deposited in contest barrels located in front of the **dream home**; on the premises of 10830 - 82nd Ave., Edmonton; or could be mailed to **Dream Home** Contest, Box 2418, Edmonton. The reverse side of the ticket contains the printed rules of the contest, which rules are in part as follows:
  1. The **Dream Home**, with attached garage, will be displayed on the premises of Crosstown Motors Ltd. on Jasper Avenue, between 117th Street and 118th Street, in the City of Edmonton. The Home will be completed with home furnishings, appliances and appointments.
  2. The **Dream Home** will be open for public inspection between the hours of 9:00 a.m. and 9:00 pm., Monday through Saturday, commencing June 1, 1959 (or as soon thereafter as the home is complete and ready for display), until December 30, 1959.

3. Persons become eligible to participate in the contest as contestants, upon purchase of an official **Dream Home** Contest Entry Blank for \$1.00.

4. Contestants will be required to estimate the total retail value of the **Dream Home** with attached garage, including its furnishings, appliances, fixtures and appointments therein contained, as displayed to the public on the premises of Crosstown Motors Ltd. Such estimate shall be in dollars and cents and shall be in one total figure.

5. The contestant who most closely estimates the total retail value of the **Dream Home** with attached garage, including its furnishings, appliances, fixtures and appointments as aforesaid, shall be awarded the **Dream Home** with attached garage, and all furnishings, appliances, fixtures and appointments as displayed, installed on a full basement on a permanent lot, in the Subdivision of Lynnwood, being Lot 21, Block 7, Plan 3176 K.S., in the Townsite of Jasper Place, excepting all mines and minerals, subject to the Rules of the Contest herein contained. The **Dream Home** and attached garage shall be conveyed by the Company to such permanent lot.

6. Upon the home being installed on said permanent lot, the said furnishings, appliances, fixtures and appointments shall be transported by the Company and installed therein.

.....

12. Persons wishing a special **Dream Home** Contest Brochure, listing the names of all persons, firms or corporations providing products and/or services in connection with the construction, furnishing, equipping or completing of the **Dream Home** and contents as displayed, may obtain same at the **Dream Home**, during the period that the home is open for public inspection.

13. The person who most closely estimates the total retail value of the **Dream Home** and contents as displayed, will be declared the Contest Winner, and must claim the award by accepting vestment thereof subject to the Rules of the Contest herein contained within 14 days of the printing of a notice to that effect in the *Edmonton Journal*. In the event that there is no claimant for the award within the 14 day period, then and in that event, the original award

shall be forfeited and there shall be substituted therefor the person who next most closely estimated the total retail value of the **Dream Home** and contents as displayed. If the second award is not claimed within 14 clear days after the printing of a notice to that effect in the *Edmonton Journal*, then and in that event the award shall automatically become the property of the Canadian Legion Strathcona Branch No. 150, to be disposed of as it sees fit.

.....

15. Upon claiming the award, the winner must properly identify himself to the satisfaction of the Company. The winning contestant shall forthwith sign an agreement containing an acknowledgment that the property has vested in him or her, and that upon the home being located on its permanent lot, as hereinbefore set out, that all responsibility with respect to the award shall remain in him or her thereafter, and that the Company is not responsible for damage to the home resulting from the public inspection, transportation or relocation of same on its permanent lot. The property shall not vest until such agreement is signed.

.....

18. The **Dream Home** Contest is conducted by **Dream Home** Contests (Edmonton) Limited, of Edmonton, Alberta, Canada, herein referred to as the 'Company.' The decisions of the Company with regard to all phases of the contest are final and by submitting an entry blank the contestant agrees to be bound thereby excepting that The Canadian Legion Strathcona Branch No. 150, shall in its sole discretion decide questions with respect to the eligibility of contestants and the selection of the contest winner and its decisions in this respect shall be final and binding.

- 9 The contest is scheduled to close at 9:00 p.m. on December 30, 1959.
- 10 During the period covered by the charges, an illustrated brochure addressed to Mr. and Mrs. Householder was widely circulated. This brochure gave detailed information about the house and its furnishings. It also included the rules of the contest. In part, the brochure said:

You could win clear title to

\* This ultra modern **Dream Home** with attached garage

\* Complete with furnishings

\* Complete with appliances

\* Complete with lot and prepaid utilities

\* Complete with full basement

Ready for Occupancy by Winner — Approx. Jan. 31st, 1960.

For Only \$1.00.

- 11 In connection with the carrying out of the scheme the appellants approached Northwest Trust Co. asking that **Dream Home** Contest be entitled to use the trust company for three purposes:
- 12 (a) To receive sealed tenders from the contractors and suppliers and to safeguard such tenders until they could be opened by the trust company in public to ascertain the total value of the house and contents;
- 13 (b) To receive, record and dispose of the tickets — such to be passed out on instructions from the appellant company;
- 14 (c) To receive moneys for the sale of tickets, hold a portion of such receipts for the Community Leagues and the Legion, and hold the balance for the appellant company.
- 15 Before consenting to act the trust company laid down certain conditions. The evidence of an officer of the trust company is in part as follows:

A. ... our fee incidentally was to be a fee of not less than eight hundred dollars for services performed throughout the transaction, and the whole thing was very nominal, as far as we were concerned, except in view of the fact that our name was involved we made extensive investigations. We assured ourselves firstly that the home and its contents would be awarded regardless whether or not tickets were sold, and for that purpose we required Mr. **Hodges** to deposit with us what we deemed a sufficient amount of money to pay for the home and its contents, and additional monies to assure that he would have

sufficient financing that the operation would get underway and that he would not be attacked by creditors, or that he would not be in indigent circumstances before he had the contest underway.

Q. What sum was involved in that regard? A. There was deposited to the credit of **Dream Home Contests**, with us, in our company, thirty-one thousand dollars.

Q. This amount was to guarantee the payment to creditors, more or less? A. It was to assure that the home and its contents were fully paid for without regard to whether tickets were sold or not, so that he would be in a position, having used our name, that there would be no possibility whatsoever that the home would not be awarded.

Q. Then, in large measure, this was in the interests of the Trust Company which was named, is that correct, this arrangement? A. It wasn't in the interests of the Trust Company, except to this extent, that before we participated in any way in this arrangement we satisfied ourselves that there was no possibility of any member of the public purchasing a ticket and not getting what he was supposed to get.

Q. Wasn't this deposit also required before you guaranteed payments of creditors' accounts? A. Naturally, we didn't give any guarantee of payment of funds until funds were deposited.

16 In the negotiations with the trust company the appellant **Hodges** acted for the appellant company.

17 Out of the said sum of \$31,000 some \$21,000 have been paid out by the trust on commitments, the balance remains in trust but is covered by letters from the trust company undertaking to pay at certain stages of the contest. The estimated expenses payable as the contest progresses are in the sum of \$114,544. On the basis of 200,000 tickets being sold, the appellant company would, according to the evidence, make a profit somewhere between \$7,000 and \$20,000 — but with over 200,000 tickets sold the profit would rise.

18 At the time of trial, July 30, 1959, \$1,400 had been received by the trust company from the sale of tickets.



Four hundred and sixty-nine tickets were seized by the police from a metal container that had been placed in front of the garage door of the **dream home**. These tickets were entered as an exhibit at the trial.

- 19 Sec. 179 (1) (e) of the *Criminal Code*, 1953-54, ch. 51, provides:

[*Conducting scheme for disposal of property.*] ... conducts, manages or is a party to any scheme, contrivance or operation of any kind by which any person, upon payment of any sum of money, or the giving of any valuable security, or by obligating himself to pay any sum of money or give any valuable security, shall become entitled under the scheme, contrivance or operation, to receive from the person conducting or managing the scheme, contrivance or operation, or any other person, a larger sum of money or amount of valuable security than the sum or amount paid or given, or to be paid or given, by reason of the fact that other persons have paid or given, or obligated themselves to pay or give any sum of money or valuable security under the scheme, contrivance or operation ....

- 20 The appellants argue that the appeal should be allowed on the grounds:

1. The learned Magistrate erred in finding that the appellant conducted any scheme contrary to the provisions of Section 179 (1) (e) of the *Criminal Code*, when in fact the awarding of the '**Dream Home**' was not contingent upon the participation of other persons in the contest, nor was anyone entitled to anything under it.

2. Upon such other and further reasons as may be notified to the Agent of the Attorney General upon receiving reasons for judgment and upon obtaining a transcript of the evidence adduced.

3. The learned Magistrate erred in finding that the contest involved the awarding of a greater amount of valuable security within the contemplation of Section 179 (1) (e) of the *Criminal Code*.

- 21 In *Rex v. Roe*, [1949] S.C.R. 652, 8 C.R. 135, 94 C.C.C. 273, which reversed in part [1948] 2 W.W.R. 1000, 7 C.R. 26, 92 C.C.C. 189, the court dealt with sec. 236 (1) (c), which section as amended is now re-enacted in sec. 179 (1) (d)

and (e) of the present *Code*. The contest in the *Roe* case was to determine the exact time a barrel would take to float 105 miles downstream in a river. The accused was charged with unlawfully managing a scheme

for the purpose of determining which holders of what tickets are the winners of certain property, to wit money proposed to be disposed of by mode of chance, contrary to sec. 236 (1) (c) of the *Criminal Code* of Canada.

22 He was also charged with unlawfully managing a scheme

by which a person upon payment of a sum of money becomes entitled, under such scheme, to receive from the said John Herbert Roe, the person managing such scheme, a larger sum of money than the sum paid by reason of the fact that other persons have paid a sum of money under such scheme, contrary to section 236 (1) (c) of the *Criminal Code* of Canada.

23 In the *Roe* case the court held, that since there was the element of skill entering into the calculation, there could be no conviction under the first part of the section. However, a conviction under the second part of sec. 236 (1) (c) was upheld.

24 In delivering the judgment of the court, Taschereau, J. states at p. 657:

The second charge is laid under the second part of subsection (c) which, as already stated, was introduced in the *Code* in 1935. It applies to every person who conducts or manages any scheme, by which any person, upon payment of any sum of money, shall become entitled under such scheme to receive from the person conducting or managing such scheme, a larger sum of money than the sum paid, by reason of the fact that other persons have paid any sum of money under such scheme. This part of section 236 (1) (c) which stands alone, does not refer to chance, or to mixed chance and skill. The receiving of money is not subordinated to any of these elements. The larger sum of money is paid to the winner by reason of the fact that other persons have paid money under the scheme.

To my mind, the rule of '*ejusdem generis*' does not apply. The admission signed by the appellant that the winning

estimators will receive a larger sum of money than that paid for their tickets, because other non-winning estimators have contributed to the scheme, brings the case within the prohibition of the Statute.

I would dismiss the appeal on the second charge.

- 25 In *Rex v. Blain* (1951) 1 W.W.R. (NS) 145, 11 C.R. 195, 99 C.C.C. 152, the accused was charged with:

For that he, the said Sylvio Blain, between on or about the 25th day of January, A.D. 1950 and the 4th day of April A.D. 1950, at the City of Prince Albert, in the Province of Saskatchewan, and within the Judicial District of Prince Albert, was unlawfully a party to a scheme, contrivance or operation by which any person upon payment of a sum of money, to wit Fifty Cents, becomes entitled under such scheme, contrivance or operation to receive from the said Sylvio Blain, The Kinsmen Club of Prince Albert, or the executive thereof, a larger sum paid by reason of the fact that other persons have paid or given a sum of money under such scheme, contrivance or operation, contrary to the provisions of Section 236 (1) (c) of the *Criminal Code* of Canada.

- 26 It appears that the accused was chairman of a committee of the Kinsmen Club which for some years had conducted what was called "The Annual Ice Break-Up Contest." Tickets were sold for 50 cents each. The purchaser of a ticket was entitled to estimate when the break-up would occur. The nearest estimate would win a prize of \$1,000. The prize of \$1,000 and the cost of operating the scheme were to be paid by the Kinsmen Club, leaving the proceeds from the sale of tickets for the purchase of milk for the children. The accused was convicted.

- 27 Martin, C.J.S., in delivering the majority judgment, concurred in by Gordon and McNiven, J.J.A., discusses the *Rex v. Roe* case, *supra*, and states at pp. 150 and 151:

Applying the decision in the *Roe* case it seems to me clear that the accused here had he been charged under the first part of sec. 236 (1) (c) might have been able to show that some skill was required in estimating the time of the ice break-up on the Saskatchewan River and might thus have had a defence to the charge. It seems equally clear that on a charge under the second part of sec. 236 (1) (c) the

accused was properly found guilty as a party who conducted or managed a scheme under which any person upon payment of a sum of money became entitled under such scheme to receive from the person conducting or managing such scheme a larger sum of money than the sum paid by reason of the fact that other persons paid any sum of money under such scheme.

Counsel for the accused contended that the scheme was not within the provisions of sec. 236 (1) (c) because it appeared that the prize of \$1,000 and the cost of operating the scheme were to be paid by the Kinsmen Club thus leaving the proceeds from the sale of tickets for the purchase of milk for the children. *Taschereau, J.*, at p. 657, referred to the admission made by the appellant in the *Roe* case and stated that the admission that the winning estimators will receive a larger sum of money than that paid for their tickets because other non-winning estimators have contributed to the scheme 'brings the case within the prohibition of the statute.' This statement was not intended to mean that the only scheme which falls within the second part of sec. 236 (1) (c) is one in which the larger sum comes from the proceeds of the sale of tickets to non-winning estimators. Moreover the language of the section indicates that the prizes need not come from moneys contributed by a limited class of persons. The larger sum of money may come from the person managing the scheme 'or any other person' by reason of the fact that 'other persons have paid or given ... any sum of money ... under such scheme.'

- 28 In the case at bar the evidence clearly establishes that \$31,000 had been deposited by the appellants with the trust company for the purpose of making sure that the **dream home**, with attached garage and complete furnishings, installed on a lot in Jasper Place, would be awarded to the winner of the contest. It was part of the overall scheme that such moneys would be so deposited. Irrespective of the number of tickets sold the winner would be entitled to the aforesaid property. The winning ticket cost a dollar, while the property to which the winner would be entitled is obviously worth many thousands of dollars.

- 29 It matters not that the property to be awarded did not come directly from the proceeds of the sale of tickets.
- 30 The property to be won would be paid for initially by money which came from the appellants, according to the arrangement made with the trust company. But it seems to me there can be no doubt that under the scheme in question, the appellants sought not only to recoup themselves for their initial outlay but also to make a substantial margin of profit, depending upon the number of tickets sold. The number of tickets seized by the police demonstrates that many tickets had been sold to the public, so at the time of such seizure the scheme was well under way. It seems to me that it has been proved beyond any reasonable doubt that the winner would be entitled to receive from the appellant company "a larger ... amount of valuable security than the sum paid" by him "by reason of the fact that other persons have paid ... any sum of money under the scheme," namely, by the purchase of tickets. The facts, proved in evidence beyond any reasonable doubt, in my view, bring the case squarely under the prohibition of the statute.
- 31 The appellants argue that in any event the winner could not receive an "amount of valuable security" within the meaning of sec. 179 (1) (e).
- 32 "Valuable security" is defined under sec. 2 (42) of the *Criminal Code*, in part, as follows:
- (c) a document of title to lands or goods wheresoever situate.
- 33 It is clear that the winner would be entitled, in accordance with rule 5 of the contest, to have the property transported and installed by the appellant company on a named "permanent" lot in Jasper Place. By virtue of rule 6, *supra*, the appellant company obligated itself to transport the "said furnishings, appliances, fixtures and appointments" to the said lot and instal them thereon.
- 34 In Alberta title to a lot is obtained by registering a transfer. The appellant company would either have to give the winner a registrable transfer or else take steps to have a transfer registered in the winner's name. In either instance, a title would result on registration.

Undoubtedly, a transfer of lands and a certificate of title are each documents of title to land and as such are valuable security under the meaning of sec. 179 (1) (e), *supra*.

35 Clause 15, *supra*, of the rules of the contest states that

The winning contestant shall sign an agreement containing an acknowledgment that the property has vested in him ....

36 The "vesting" presupposes the existence of some document transferring the title to the building and its contents to the winner. The only reasonable inference, in my view, is that the winner would be entitled to the delivery to him of some document transferring ownership of the chattels. That document would be a document of title to goods and as such would be valuable security under the meaning of sec. 179 (1) (e), *supra*.

37 The brochure referred to above addressed to the householder states in part: [See, *ante*, p. 134.]

38 It is clear from the quoted portion, *supra*, in the brochure that the appellant company had in mind the issuance to the winner of a clear title, both to the real as well as the personal property to be awarded. That title would, undoubtedly, be valuable security within the meaning of sec. 179 (1) (e), *supra*.

39 I would dismiss the appeals and affirm the convictions.

**McBride, J.A. concurs with Macdonald, J.A.:**

**Porter, J.A.:**

40 The offence is to conduct or manage a scheme — or operation — any kind which has the results stated by the section. The description of the offending activity by the words "scheme or operation" seems to me to require that the whole of the undertaking must be examined to determine whether it is a scheme or operation within the prohibition of this section.

41 Looked at as a whole there can be no doubt that the scheme here is clearly within the section.

42 I concur in the judgment of my brother Macdonald, J.A.

**Johnson, J.A. (dissenting):**

43 The point in this appeal is whether the appellants have been properly convicted under sec. 179 (1) (e) of the *Criminal Code*, 1953-54, ch. 51.

44 Stripped of all words unnecessary to this appeal, this subsection reads:

Every one is guilty of an indictable offence ... who conducts ... any scheme ... by which any person, upon payment of a sum of money ... shall become entitled under the scheme ... to receive from the person conducting ... the scheme, ... a larger ... amount of valuable security than the sum ... paid or given ... by reason of the fact that other persons have paid or given or obligated themselves to pay or give any sum of money or valuable security under the scheme, ....

45 The facts are fully set out in the judgment of my brother Macdonald and it is clear that all the ingredients to constitute the offence, except one, are here present. **Dream Home** Contests (Edmonton) Ltd. is conducting a scheme whereby the purchaser of a ticket becomes entitled under the scheme (if his estimate is the closest to being correct) to receive from **Dream Home** Contests (Edmonton) Ltd. a larger amount of valuable security than the sum he paid. The question to be decided concerns the closing words of the subsection and is: Assuming the ticket purchaser were successful and were given the house and land, would he receive it because other persons had paid or given or obligated themselves to pay or give any sum of money or valuable security under the scheme ....

46 Counsel for the Crown has advanced two submissions, (1) That in two judgments, one of the Supreme Court of Canada and the other the Court of Appeal of Manitoba, the point has been settled against the appellants; and (2) That in the absence of direct evidence, the court should, because of the printing of 400,000 tickets, draw the inference that the scheme contemplated that other persons would buy tickets and the offence would thus be proved.


- 47 *Rex v. Roe*, [1949] S.C.R. 652, 8 C.R. 135, 94 C.C.C. 273, which reversed in part [1948] 2 W.W.R. 1000, 7 C.R. 26, 92 C.C.C. 189, a decision of the Supreme Court of Canada, is one of the cases relied upon. Taschereau, J., who gave the judgment of the court, dealt with this subsection, which at the time was sec. 236 (1) (c) of the old *Code*, in the last two paragraphs but one of his reasons for judgment (p. 657): [See, *ante*, pp. 137-138.]
- 48 There were in that case written admissions that supplied the ingredient that we are here dealing with, and that case can be of no assistance to the Crown.
- 49 *Rex v. Blain* (1951) 1 W.W.R. (NS) 145, 11 C.R. 195, 99 C.C.C. 152, is closer to the present case. It is, however, significant to note that the party charged with the offence and the organization which put up the prize were not the same. The accused was the person who conducted the scheme and the \$1,000 prize money was put up by the Kinsmen's Club, and the jury having found the accused guilty, it must be assumed that they found all the ingredients necessary to sustain the conviction. This they were entitled to do if they found that the accused was in fact the operator of the scheme and that the Kinsmen's Club (other persons) had obligated itself to give the prize money.
- 50 In the present case, **Dream Home** Contests (Edmonton) Ltd. has been charged and found guilty of conducting a scheme, but in this case unlike the *Blain* case, *supra*, the accused also provided the prize. There are therefore no "other persons" and this essential element is missing unless it can be said that the other purchasers of tickets fulfil this description.
- 51 . The evidence of Mr. Macdonald, a witness called by the Crown, shows the precautions which were taken to assure that the moneys to build the house and purchase the contents and the lot would be provided before any tickets were sold. It may be that the trust company was protecting itself against liability for default of the promoters of the scheme as well as endeavouring to ensure that the scheme did not offend against the *Code* subsection, but at all events, it is clear that as a result of these efforts, it was assured that there would be a winner even if only one ticket were sold. While it can be assumed



that the scheme was entered upon in expectation that others would participate by buying tickets, can it be said that when the first ticket had been sold (and I think this must be the determining point) that "other persons had paid or given or obligated themselves to pay or give any sum of money or valuable security under the scheme ...?" While it was undoubtedly the expectation of the promoter of the scheme that large numbers of tickets would be sold, the winning of the prize was not dependent on this or, in fact, on the sale of any tickets except one. I would hold that the Crown has failed to prove this part of the offence.

52 **Hodges**, an officer and employee of the other appellant, has also been convicted. Examination of the exhibits makes it clear that it was the corporate appellant that was conducting the scheme. A company can only act through servants and agents but it does not follow that these servants or agents are also conducting the scheme. Had a scheme within the subsection been proved, a charge of managing or being "a party to" the scheme could no doubt have been made out.

53 I would allow the appeal and set aside the convictions.

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